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# Property disputes within the family and how a Deputy can navigate them

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I am going to cover:

- Common property problems involving P's family
- Litigation authority
- Approval



You are appointed as P&A deputy after the High Court approval hearing takes place. After reviewing the file and reading the settlement order, you see that it contains a provision directing you to buy a house for P (adult) with part of their settlement monies (you don't have authority from the COP). The order also purports to declare that P's parents have a beneficial interest in the property (who haven't contributed towards the purchase).



- Part 21.11, CPR confers power to decide (to a certain extent) how the settlement should be held and invested.
- No power to order that P is divested of their damages.
- COP is court with power to authorise gifts and/or settle P's estate for others.
- Can anything be done to rectify the position?



You are appointed as P&A deputy during the civil claim. P lives in the annex of his parents' home which they own subject to a mortgage. His damages were used to refurbish the annex and this has increased the value of the property. P has, on the face of it, no express beneficial interest in the property and no express tenancy agreement but he has been paying a monthly sum for his occupation. P is in his 20s and has a girlfriend. His aim is to move into his own property in the future. The parents want the deputy to use P's funds to pay off their mortgage.



- Problem is that P's money has been used to improve a property in which he has no beneficial interest.
- He is also paying rent to occupy a space which he has paid a substantial sum to refurbish with no guarantee that he can remain there for his lifetime (if he wants).
- Can paying off the parents' mortgage ever be in P's best interests?
- What can or should you do as deputy to sort this out?



You are appointed as P&A deputy. You consider it is in P's best interests to sell P's second property. They live in their main property and need the capital to fund their care fees. There is a gift of the second property to P's son in P's Will. The son objects to the deputy having authority to sell the second property.



- Will rarely be in P's best interests to preserve a property for beneficiaries over meeting the cost of P's care need.
- General rule of thumb – when considering affordability, COP likes to see P has available capital to pay for ten years of care
- These disputes end up being expensive so are there proposals to be made?
- Costs – common for these disputes to see a departure from rule 19.2
- Increasing focus on success vs loss see Riddle v NA [2025] EWCOP 39.



You are appointed as P&A deputy following the removal of P's previous deputy. Whilst P was a child, a property was purchased on his behalf using an interim payment. His mother and former deputy are trustees of the property. P is now an adult and has fallen out with his mother causing him to leave and live elsewhere. P's mother refuses to vacate asserting that the property is 'hers'. P wants to move back in.



- There *should* be a declaration of trust setting out the interest in the property.
- An express declaration of trust is conclusive on beneficial interest unless it was varied by agreement: see Stack v Dowden [2007] UKHL 17
- But what if a DOT does *not* exist?
- Consider claim pursuant to section 14 of the Trusts of Land and Appointment of Trustees Act 1996?
- What about the mother being registered proprietor? How do we get possession?
- Are there alternatives to litigation?



You are appointed as a panel P&A deputy. After (eventually) receiving the sealed deputy order, you learn that large parts of P's estate have been misappropriated by her son in his capacity as her attorney. Her investments were drawn down and used to fund the son's three month trip to Vegas, pay off his credit cards and discharge his and his wife's mortgage. P is now unable to pay her care fees.



- Potential tracing remedies against son/wife's property.
- Are there ways you can preserve the son's property without recourse to litigation?
- If not, what are your options?



# Authority to Litigate

- Conducting litigation (beyond receiving the letter of response) is outside the scope of a deputy's general authority.
- Instructing the litigation department of your firm gives rise to a conflict of interest = need this authorised.
- Litigation friend authority = recent orders from the COP.



- Making your application to the COP:
  - Don't delay.
  - Prospective vs retrospective authority
  - Counsel's advice on prospects.
  - Evidence of estimated litigation costs.
  - Quotes from three firms including your own.
  - Use litigation firms with necessary expertise!
  - Service/notification of family members where they are the proposed defendant?



# Approval

- Use ADR – RTMs, mediation, FDRs, ENEs.
- Any compromise involving a protected party must be approved by the court to be binding.
- Ensure you factor into your settlement your part 8 costs of approval.
- The test is whether the settlement is in P's best interests.
- Are orders required from the COP in order to carry out the settlement?





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Thank you

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